

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): Boyle et al.

Serial No.: 10/762,159

Group Art Unit No.: N/A

Filed: January 20, 2004

Examiner: N/A

For: Osteoprotegerin

Docket No.: A-378CIP2C5

PETITION TO ACCORD A FILING DATE FOR A CONTINUATION APPLICATION
FILED UNDER 37 CFR 1.53(b)Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Petition is in response to the *Notice of Incomplete Nonprovisional Application* dated May 5, 2004. Applicants respectfully submit that the subject application is entitled to a filing date for the reasons set forth below.

The present application is a continuation of U.S.S.N. 09/132,985 filed under 37 CFR 1.53(b) on January 20, 2004 with a specification and at least one claim but without drawings. However, as provided for in MPEP Section 201.06(c), the application may be amended to include the portion that had been inadvertently omitted provided a statement that the contents of the prior application are "hereby incorporated by reference" is present. Such a statement may appear either in the specification or in the application transmittal letter. It is further stated in Section 201.06(c) of the MPEP that "[t]he inclusion of this incorporation by reference of the prior application(s) will permit an applicant to amend the continuation or divisional application to include any subject matter in such prior application(s), without the need of a petition provided the continuation or divisional application is entitled to a filing date notwithstanding the incorporation by reference."

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EXPRESS MAIL CERTIFICATE

"Express Mail" mail labeling number:

EL360692151US

Date of Deposit:

July 2, 2004

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. 1.10 on the date indicated above and is addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

SL. ST. ANDREW

Printed Name

SL. ST. ANDREW

Signature

Applicants attach hereto a copy of the Application transmittal form submitted on January 20, 2004. The transmittal form states the following in boldface, below the title, "OSTEOPROTEGERIN":

The entire disclosure of the prior application, from which an oath or declaration is supplied under Box 1(b), below, is considered a part of the disclosure of the accompanying continuation or divisional application and is hereby incorporated by reference. The incorporation can only be relied upon when a portion has been inadvertently omitted from the submitted application parts.

Applicants maintain that the above statement allows for incorporation by reference as a safeguard against the inadvertent omission of the drawings and amendment of the subject application to include the drawings from the prior application.

In the Notice of May 5, 2004, it is alleged that a copy of the "Sequence Listing" in computer readable form and a statement that the Sequence Listing in computer readable and written form are identical and contain no new matter are necessary for a filing date. Applicants respectfully submit that such items are not required for a filing date as it is clearly stated in 37 CFR 1.53(b) that the filing date for an application is the date on which a specification as prescribed by 35 U.S.C. 112 containing a description pursuant to 37 CFR 1.71 and at least one claim pursuant to 1.75 and any drawing required by 1.81(a) are filed in the Patent and Trademark Office. As explained above, Applicants have complied with all these requirements and are therefore properly entitled to a filing date.

The Commissioner is hereby authorized to charge a filing fee of \$130.00 to Deposit Account No. 01-0519 in the name of Amgen Inc. for this petition. Applicants request a refund of this fee should this petition be acted on favorably.

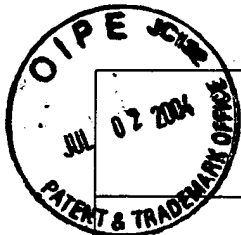
Respectfully submitted,



Robert B. Winter
Attorney/Agent for Applicant(s)
Registration No.: 34, 458
Phone: (805) 447-2425
Date: July 2, 2004

Please send all future correspondence to:
US Patent Operations/RBW
Dept. 4300, M/S 27-4-A
AMGEN INC.
One Amgen Center Drive
Thousand Oaks, California 91320-1799

COPY



**DIVISION - CONTINUATION - CONTINUATION-IN-PART
APPLICATION TRANSMITTAL FORM**

Attorney Docket No.:

A-378CIP2C5

10	Anticipated Classification Of This Application: Class	Subclass	Prior Application: Examiner DeBerry, R.	Art Unit 1647
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To the Commissioner for Patents:

This is a request for filing a ☒ continuation ☐ divisional ☐ continuation-in-part application, under 37 CFR 1.53(b), of pending prior application Serial No. 09/132,985 filed on August 12, 19 98 which is a continuation of Serial No. 08/771,777 filed on 12/20/96, which is a continuation in part of Serial No. 08/706,945 filed on 09/03/96, which is a continuation in part of Serial No. 08/577,788 filed on 12/22/95.

of

for OSTEOPROTEGERIN

For CONTINUATION or DIVISIONAL APPLNs only: The entire disclosure of the prior application, from which an oath or declaration is supplied under Box 1b, below, is considered a part of the disclosure of the accompanying continuation or divisional application and is hereby incorporated by reference. The incorporation can only be relied upon when a portion has been inadvertently omitted from the submitted application parts.

- ☒ Transmitted herewith are:
 - ☒ 138 pages of specification, 80 pages of sequences 9 pages of claims,
 - ☐ 1 page of abstract, totaling 228 pages.
 - ☒ 3 pages of Oath or Declaration by the applicant(s):
 - ☐ a. Newly executed (original or copy)
 - ☒ b. Copy from a prior application (37 CFR 1.63(d)) (for continuation/divisional applns. only)
 - ☒ Copy of Sequence statement from parent case Serial No. 08/771,777 filed December 20, 1996
- ☒ The filing fee is calculated below:

For	Number Filed		Number Extra	Rate	Fee
Total Claims	25	- 20 =	5	x \$18.00 =	\$ 90.00
Independent Claims	1	- 3 =	0	x \$86.00 =	0.00
Multiple Dependent Claims	1			+ \$290.00 =	290.00
Basic Fee				\$770.00 =	770.00
Total Filing Fee					\$1,150.00

- ☒ Please charge Deposit Account No. 01-0519, in the name of Amgen Inc., in the amount of \$1,150.00. An original and one copy are enclosed.
- ☒ Throughout the prosecution of this application, if any extension of time is necessary, please consider this a request therefor.
- ☒ The Commissioner is hereby authorized to charge any additional filing fees which may be required by the accompanying application, any additional fees which may be required during pendency of this application as required by 37 CFR 1.16 or 1.17, or credit any overpayment to Deposit Account No. 01-0519 throughout the prosecution of this application.
- ☒ Cancel in this application original claims 1-48, 50 and 54-60 of the prior application before calculating the filing fee. (At least one original independent claim must be retained for filing purposes.)

EXPRESS MAIL CERTIFICATE

"Express Mail" mail labeling number: EL360693585USDate of Deposit: January 20, 2004

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. 1.10 on the date indicated above and is addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

Jay A. Kase
Printed Name

[Signature]
Signature

7. ☒ Preliminarily, please amend this specification by inserting before the first line the following:

-- This application is a continuation of Serial No. 09/132,985 filed August 12, 1998, which is a continuation of Serial No. 08/771,777 filed December 20, 1996, which is a continuation-in-part of Serial No. 08/706,945 filed September 3, 1996, which is a continuation-in-part of Serial No. 08/577,788 filed December 22, 1995 --

8. ☐ Transfer the drawings from the prior application to this application and abandon said prior application as of the filing date accorded this application. A duplicate copy of this sheet is enclosed for filing in the prior application file. (May only be used if signed by person authorized by § 1.138 and before payment of base issue fee.)

8a. ☐ New formal drawings are enclosed.

9. ☐ Priority of application Serial No. _____ filed on _____ in _____ (country) is claimed under 35 USC 119.

9a. ☐ The certified copy has been filed in prior application Serial No. _____ filed _____

10. ☒ The prior application is assigned of record to Amgen Inc.

11. ☒ A preliminary amendment is enclosed.

12. ☒ Also enclosed Attorney's Statement

13. ☐ Other: _____

14. ☒ The power of attorney in the prior application is to:
Ron K. Levy, Registration No. 31,539; Steven M. Odre, Registration No. 29,094; and
Robert B. Winter, Registration No. 34,458

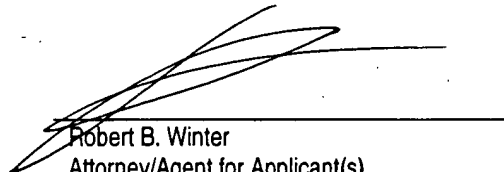
a. ☒ The power appears in the original papers in the prior application.

b. ☐ Since the power does not appear in the original papers, a copy of the power in the prior application is enclosed.

c. ☒ Address all future communications to
Robert B. Winter
at the address below.

Signator: ☐ Assignee of complete interest

☒ Attorney or agent of record


Robert B. Winter
Attorney/Agent for Applicant(s)
Registration No. 34,458
Phone: (805) 447-2425
Date: January 20, 2004

Please send all future correspondence to:

U. S. Patent Operations/ RBW
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One Amgen Center Drive
Thousand Oaks, California 91320-1799, USA



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